WAN ISMAIL & ANOR.

v.

MUSA MAT JANI & ANOR.

HIGH COURT MALAYA, TEMERLOH
LAMIN MOHD. YUNUS J
[CIVIL SUIT NO. 22-8 OF 1988]
10 JUNE 1989

CIVIL PROCEDURE: *Agreement to mine for gold ore - Option to take a sub-lease - Notice to terminate agreement - Whether agreement void ab initio.*

LAND LAW: *Statutory definition of "Malay" and "dealing" - Malay Reservations Enactment (Cap. 142) ss. 2, 7, 19 - Land Code (Cap. B8) s. 2.*

The first defendant had applied for a mining land from the State of Pahang and this application was approved on 28 February 1985 involving an area measuring some 35 acres ("the said area"). On 13 March 1985 the first defendant and the plaintiff entered into an agreement ("the agreement") whereby the plaintiff undertook to mine for gold ore in the said area, either as agent or as contractor for the defendant. Under the terms of the agreement, the first defendant was to grant an option to the plaintiff to take a sub-lease of the said area. A mining certificate was granted to the first defendant on 3 February 1986.

Due to some problems between the parties, the first defendant gave notice to terminate the agreement. The plaintiff applied for and obtained an injunction to restrain the defendants from interfering with the plaintiff's rights under the agreement. The first defendant applied to set aside the injunction on the ground, *inter alia*, that the agreement was illegal and therefore *void ab initio* since it was contrary to the Malay Reservations Enactment. The application was allowed and the plaintiff now appeals.

Held:

[1] The mining area granted to the first defendant was part of a Malay reserve land.

[2] The plaintiff is not a "Malay" for the purposes of s. 2 of the Malay Reservations Enactment.

[3] The agreement of 13 March 1985 was to sub-lease to the plaintiff company the mining lease granted to the first defendant; it was therefore a "dealing" and since it contravened the Enactment it could not be legally recognised.

[4] For the same reasons, the powers of attorney granted by the first defendant in favour of the managing director of the plaintiff company could not be recognised in law.

[Appeal dismissed.]

Legislation referred to:
Land Code (Cap 138), s. 2
Malay Reservations Enactment (Cap 142), ss. 2, 7, 19, 19(i)

For the defendants/applicants - Y.M. Raja Azhar bin Raja Nahar with Manjit Singh; M/s. Raja Azhar & Husain Safri
For the plaintiff/respondent - B.E. Teh; M/s. Teh & Associates

[Editor's note: The plaintiff's appeal to the Supreme Court was dismissed on 21 May 1990.]

JUDGMENT

Lamin Mohd. Yunus J:

This is an application (encl. 13) by the defendants/applicants to set aside the injunction obtained against them on 20 July 1988. On 28 February 1985, the 1st defendant's application for a mining land was approved for an area of 35 acres 2 rods 22 poles (not 48 acres as indicated by the first letter of approval earlier in the day: see the two letters from the Pejabat Tanah Daerah Lipis both dated 28 February 1985). On 13 March 1985 the first defendant and the plaintiff entered into an agreement whereby the plaintiff undertook to mine for gold ore in the said area as approved and identified as S.G.1/37 Lot No. L.O.1013 Mukim Telang, Lipis (hereafter referred to as the mining land). The plaintiff was to mine/work for the gold ore either as agent or as contractor for the defendant. By clause 1 of the said agreement, the 1st defendant was to grant an option to the plaintiff to take a sub-lease over the said mining land. Following the granting of the mining lease, on 3 February 1986, the 1st defendant was given a mining certificate thereby permitting the commencement of mining operation in the said area. However due to problems between themselves, the 1st defendant by a letter dated 10 December 1987 (see Exhibit LS4 to encl. 5) gave notice to terminate, with immediate effect, the agreement of 13 March 1985. Accordingly on 20 July 1988 the plaintiff applied for and obtained an injunction (application as per encl. 5) to restrain the defendants from interfering with the plaintiff company in exercising its rights under the said agreement. By encl. 13, the 1st defendant applied to set aside the injunction on the grounds, *inter alia*, that the agreement of 13 March 1985 was illegal and therefore *void ab initio* in the face of the Malay Reservations Enactment (Cap.142) [1]. On 15 December 1988 I allowed the application in the terms as prayed and the plaintiff now appeals.

I was satisfied that from the evidence adduced before me that the defendants had conclusively proved that the said mining area was part of a Malay Reserved Land *vide* Pahang Gazette Notification No. 171 dated 26 February 1987. As my decision to allow the application to set aside the injunction against the defendants was solely persuaded by the provisions of the Malay Reservations Enactment, I did not find it necessary to dwell further on the merits of this case on other grounds.

Section 2 of the Malay Reservations Enactment makes provision for the definition of "Malay" with regard to both an individual and a corporate body. For a corporate body to be treated as a "Malay" for the purposes of the Enactment, the definition reads:

> For the purposes of the Enactment a company registered under the Companies Enactment shall if and so long as every member thereof is a Malay and the transfer of shares therein is restricted by the articles of association thereof to Malays be deemed to be a Malay ...

Reading the above definitions I find that the plaintiff company cannot therefore be accepted as a "Malay". For ease of reference if I may also reproduce the other relevant provisions of the said Enactment and any other law relevant to this case. Section 2 of the Enactment also imports the definition of words and expression as contained in the Land Code and the provision reads:

> All words and expressions used in this Enactment which are defined in s. 2 of the Land Code shall bear the meaning assigned to them by the said section.

(The Land Code referred to must mean the Land Code Cap. 138 being one of the F.M.S. revised laws and so is the Malay Reservations Enactment Cap. 142.) s. 7 of the Enactment reads:

No State land included within a Malay Reservation shall be sold, leased or otherwise disposed of to any person not being a Malay:

Provided that the Ruler in Council may alienate State Land within a Malay Reservation to any body corporate or company specified in the Third Schedule, which the Ruler in Council may, by order published in the Gazette, add to, delete from or amend, from time to time:

Provided further that any State land thus alienated shall be deemed to be a Malay holding.

Section 19 of the Enactment reads:

(i) All dealings or disposals whatsoever and all attempts to deal in or dispose of any Malay holding contrary to the provisions of this Enactment shall be null and void and no rent paid in pursuance of any such dealing disposal or attempt shall be recoverable in any Court.

(ii) No action for breach of contract shall lie in respect of any dealing in or disposal of or any attempt to deal in or dispose of any Malay holding contrary to the provisions of this Enactment.

The definition of the word "dealing" as found in s. 2 of the Land Code Cap. 138 (2) reads:

"Dealing" with its grammatical variations and cognate expressions means any transaction of whatever nature by which land is affected under this or any previous Land Enactment or Registration of Titles Enactment, and includes a caveat.

This definition must therefore be given effect to the word "dealing" in the Malay Reservations Enactment.

I find that the purport of the agreement of 13 March 1985 was to sub-lease to the plaintiff company the mining lease granted to the 1st defendant. The plaintiff company not being a "Malay", is legally prohibited to "deal" or even "attempt to deal" with a Malay holding and any such deal or attempt to deal would be null and void (s. 19(i) of the Malay Reservations Enactment Cap. 142). Also as the plaintiff company is not a body gazetted under the Third Schedule as required by s. 7 of the Enactment I am also of the view that the transaction as undertaken within the terms of the agreement of 13 March 1985 cannot legally be recognised. Similarly the power of attorney dated 27 November 1986 granted by the 1st defendant in favour of one Lim Seng @ Lam Kam Seng, the managing director, of the plaintiff company cannot also be recognised in law.

Also found at [1990] 2 CLJ 379